

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 213

AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-2.5-1-28 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.**

SECTION 2. IC 6-2.5-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) Sales of food and food ingredients for human consumption are exempt from the state gross retail tax.

(b) For purposes of this section, the term "food and food ingredients for human consumption" includes the following items if sold without eating utensils provided by the seller:

- (1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).
- (2) Food sold in an unheated state by weight or volume as a single item.
- (3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human

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consumption" does not include:

- (1) candy;
- (2) alcoholic beverages;
- (3) soft drinks;
- (4) food sold through a vending machine;
- (5) food sold in a heated state or heated by the seller;
- (6) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); ~~or~~
- (7) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food); **or**
- (8) tobacco.**

SECTION 3. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:**

- (1) without motive power;**
- (2) designed for carrying property;**
- (3) designed for being drawn by a motor vehicle; and**
- (4) having a gross vehicle weight rating of at least two thousand two hundred (2,200) pounds.**

**(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.**

**(c) A transaction involving a cargo trailer, a recreational vehicle, or an aircraft is exempt from the state gross retail tax if:**

- (1) the purchaser is a nonresident;**
- (2) upon receiving delivery of the cargo trailer, recreational vehicle, or aircraft, the person transports it within thirty (30) days to a destination outside Indiana;**
- (3) the cargo trailer, recreational vehicle, or aircraft will be titled or registered for use in another state or country; and**
- (4) the cargo trailer, recreational vehicle, or aircraft will not**

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be titled or registered for use in Indiana.

The amount of the exemption for a cargo trailer or recreational vehicle is determined in subsection (d).

(d) The amount of the exemption for a cargo trailer or a recreational vehicle under this section is equal to the amount of:

- (1) the state gross retail tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana; minus
- (2) the sales, use, or similar tax that would have been imposed on the transaction under the laws of the state or country in which the purchaser affirms the cargo trailer or recreational vehicle will be registered.

The amount of the exemption under this section may not exceed the amount of the state gross retail tax that would be imposed on the transaction if the cargo trailer or recreational vehicle were registered in Indiana. A retail merchant that accepts an exemption claim for a cargo trailer or recreational vehicle under this section shall, within sixty (60) days after the date of the transaction, have on file a copy of the purchaser's title or registration of the cargo trailer or recreational vehicle outside Indiana or pay to the state the amount of the exemption.

(e) Any state gross retail tax due after the application of the exemption provided by this section must be paid to the retail merchant.

(f) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:

- (1) transport the cargo trailer, recreational vehicle, or aircraft to a destination outside Indiana within thirty (30) days after delivery; and
- (2) title or register the cargo trailer, recreational vehicle, or aircraft for use in another state or country.

The department shall prescribe the form of the affidavit. The affidavit must identify the state or country in which the cargo trailer, recreational vehicle, or aircraft will be titled or registered. Within sixty (60) days after the date of the transaction, the purchaser shall provide to the retail merchant a copy of the purchaser's title or registration of the cargo trailer, recreational vehicle, or aircraft outside Indiana.

(g) The department shall provide the information necessary to calculate the amount of an exemption claimed under this section to retail merchants in the business of selling cargo trailers or

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**recreational vehicles.**

SECTION 4. IC 6-2.5-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

**(d) The department shall allow any monetary allowances that are provided by the member states to sellers or certified service providers in exchange for collecting the sales and use taxes as provided in article VI of the agreement.**

SECTION 5. [EFFECTIVE JULY 1, 2005] IC 6-2.5-5-39, as added by this act, applies to transactions occurring after June 30, 2005.

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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